COURT'S ORDER WHETHER THE CASE IS OR NOT APPROVED FOR REPORTING

[Chapter VIII, Rule 32 (2) (b)]

Description of case

Writ Petition No.2134 (M/S) of 2001

Smt. Cicilia and others

Vs.

1st Additional District Judge, Nainital and others

√A.F.R. (Approved for reporting)
Not Approved for Reporting

(B.S. Verma, J.)

Initials of Judge

Date: 2nd May 2007

IN THE HIGH COURT OF UTTARAKHAND ATNAINITAL

Writ Petition No. 2134 of 2001 (M/S)
(Old No. 2777/1985)

1. (a) Smt. Cicilia Channi W/O Late Puranmasi,
   (b) Km. Martha Masi D/O Late Puranmasi adult.
   (c) Km. Rita D/O Late Puranmasi adult,
   (d) Master Laurence minor D/O late Puranmasi,
   (e) Master Barnad S/O late Puranmasi, (minor)
   (f) Master John S/O late Puranmasi (minor)
   (g) Km. Mariyan minor d/o late Puranmasi.
   (h) Master Einnanual s/o late Puranmasi.
   (i) Km. Vineeta Roshu D/O Puran Masi.
2. Mohan Massi, S/O Jagoo Massi.
3. Lal Massi S/O Jawala Massi.
4. Mahendra Massi S/O Rehmat Massi.
5. Shambhu Massi S/O Sadak Massi.
6. Nanak Massi S/O Jagoo Massi.
7. Sadak Massi S/O Umrao Massi.
8. John Massi S/O Ruda Massi.
9. Catholic Diocese of Lucknow, through Father X. D' Souze, All residents of village Dah Farm, Pargana Bilheri Tehsil Khatima, District Nainital.

……. Petitioners.

Versus

1. The 1st Additional District Judge, Nainital.
2. The Sub-Divisional Officer/Prescribed Authority (under the U.P. Imposition of Ceiling on Land Holdings Act, 1960), Khatima (Nainital),
3. State of Uttar Pradesh.
4. Basant Singh S/O Pala Singh, Resident of village Dah, Tahsil Khatima, District Nainital.

… Respondents.

Sri Vijay Bhatt learned counsel for the petitioners.
Sri Gopal Narain Srivastava, learned Brief Holder for the State-respondents 1-3.

Dated May 02, 2007.

Hon'ble B.S. Verma, J.

By means of the present writ petition, the petitioner has prayed for issue a writ, rule, order or direction in the nature of certiorari quashing the impugned order dated 22-11-1984 passed by the I Additional District Judge, Nainital as well as the order dated

26-3-1983 passed by the Prescribed Authority (Annexure Nos. 11 & 10 respectively).

Brief facts, giving rise to the present writ petition are that according to the petitioners they are in possession of the land in dispute much before 1375 Fasli and at that time Basant Singh, respondent no.4, was mentioned as absconding from the village, where the suit land is situate.

The dispute arose when one Ghamand Singh gave choice of change of plots of land, which was proposed to be declared surplus before the Prescribed Authority Khatima in the matter arising out of Case No. 51/61 of 1974-75, State Vs. Basant Singh vide Annexure No.5 to the writ petition. According to the petitioners, Ghamand Singh had no concern with the land, which included the land of the petitioners, therefore, the petitioners filed objection before the Prescribed Authority inter alia on the ground that the land which was proposed to be declared surplus was not in possession of Basant Singh rather it was in possession of the petitioners for the last more than 20 years. Hence Ghamand Singh could not have given change of choice of plots on behalf of Basant Singh. Basant Singh, the original tenure holder is not residing in the village since long time. The objection of the petitioners was rejected vide order dated 26.3.1983 by the Prescribed Authority with the direction that the petitioners were in illegal possession of the land and as per definition of tenure holder in the U.P. Imposition of Ceiling on Land Holdings Act 1960 **(for short the Act),** they had no right to prefer objection, as they are not recorded tenure holder. Against the order of the Prescribed Authority, an appeal was preferred by the petitioners before the District Judge Nainital, which was, ultimately, heard and dismissed by 1st Additional District Judge, Nainital vide order dated 22-11-1984 on the same ground.

It has been contended by the learned counsel for the petitioners that the learned Additional District Judge has observed that "the record on file also establishes that Basant Singh is not in physical possession of these plots and is absconding and does not continuously reside in the village but these facts would not help the appellants to the extent that land of plot no. 128 and 143 M. should not be taken in the choice of the tenure-holder. Therefore, the appellants being not recorded as tenure-holders have no locus standi to file the appeal. Therefore, the appeal deserves to be dismissed."

The learned counsel for the petitioners has submitted that it is not necessary that the tenure holder must be a recorded tenure holder and that the tenure holder includes unrecorded tenure holder, who can file objection before the Prescribed Authority. Learned counsel has placed reliance upon the verdict of the Allahabad High Court in the case of ***Bageshwari Devi Vs. Shashi Bind Narain Sewar Pandey and another [1965, A.L.J., Page 756],*** wherein it has been held that "Tenure-holder" as defined in Sec. 3(b) of the U.P. Imposition of Ceiling on Land Holdings Act, includes as unrecorded tenure-holder also. It was further held that a tenure holder, whether recorded or unrecorded can, as a matter of right, file an objection at the stage of Section 10(2) of the said Act. If no objection or application was made within the prescribed period, or an application already made cannot be deemed to be an objection under Section 10(2) of the Act, the Prescribed Authority can on sufficient cause being shown, permit the party to file an objection even after the expiry of the prescribed period.

Learned counsel for the petitioners further argued that service of notice under Rule 8 of the Rules framed under the said Act is preliminary to the acquisition of jurisdiction to proceed in the matter to declare land as surplus land and if notice as required under Rule 8 has not been served, the proceedings are liable to be quashed. Moreover, the Prescribed Authority is bound to serve the

notice to any other person if from the revenue records or other information, the Prescribed Authority comes to know that the land included in the statement in C.L.H. Form 3 includes land ostensibly held in the name of any other person. In support of his contention, the learned counsel for the petitioner has placed reliance upon the Full Bench judgment of the Allahabad High Court in the case of ***"Shantanu Kumar Versus State of U.P. and others" [1979, A.W.C., Page 585]*** wherein it has been held in paragraphs no. 9 that "it is thus evident that the notice requiring the tenure-holder to show cause why the statement prepared by the Prescribed Authority be not taken as correct is to be issued to the tenure-holder in respect of whose holding the statement has been prepared." It has further been observed that ***"if from the revenue records or other information, the Prescribed Authority comes to know that the land included in the statement in C.L.H. Form 3 includes land ostensibly held in the name of any other person, the Prescribed Authority is bound to serve notice on such person. The phrase used is 'shall cause to be served'.***

Learned counsel for the petitioners further submitted that the courts below failed to appreciate the legal position that the plots given up by the tenure-holder as surplus plots being under litigation or in possession of trespasser cannot be treated as the land of the tenure-holder and the impugned orders were passed against the provisions of Section 12-A of the Act. He has placed reliance upon the judgment of the Allahabad High Court in the case of ***Lal Gopal Singh Vs. The State of Uttar Pradesh and others [1988, U.P.Revenue Judgments (H.C.) Page 24].*** The case of ***Mohd. Ibrahim Vs. State of U.P. [1979, ALJ, 81]*** was relied upon by the Allahabad High Court wherein it was held that if the plots which are given up by the tenure holder as surplus plots are under litigation or is in possession of the trespasser, the said land cannot be treated as the land of the tenure-holder. The District Judge and the Prescribed Authority, both, failed to appreciate this legal position.

It is not disputed that the objection of the petitioners was not dismissed on merit, but the same was dismissed summarily as not maintainable holding that the petitioner is not a recorded tenure holder and is a trespasser. The appellate court has observed in its judgment that "*because the appeal or objection is filed only by the tenure-holder as I held above and the appellants failed to prove themselves to be the tenure holders of plot no. 128 and 143, hence the appeal cannot be allowed."*

I have heard learned counsel for both the parties and perused the record including the orders passed by the two courts below.

The definition of 'tenure-holder' as mentioned in Section 3(17) is as under:-

'tenure-holder' means a person who is the holder of a holding but except in Chapter III does not include-

(a) a woman whose husband is a tenure-holder;

(b) a minor child whose father or mother is a tenure-holder.

Thus, from a bare perusal of the definition of tenure-holder, it is obvious that there is no distinction between a recorded tenure holder or unrecorded tenure-holder, meaning thereby that a person who is in possession over the land shall be entitled to the notice under Section 10(2) of the Act read with Rule 8 of the Rules framed under the said Act and in view of the case-law referred to above, such a tenure holder as a matter of right can file objection at the stage of Section 10(2) of the Act and thereafter the Prescribed Authority can on sufficient cause being shown permit the party to file objection even after expiry of prescribed period.

It is pertinent to note that in paragraph no. 10 of the writ petition it was stated that since according to the entries maintained by the State Government itself, Basant Singh had become *Farar* at least from 1375 Fasli, on their own showing, there could be no question of any notice in respect of the proceedings under the Act being served upon him. Counter Affidavit has been filed by the then Naib Tahsildar, Tahsil Khatima, but the respondents could not dare controvert or deny the contents of paragraph no. 10 of the writ petition in any manner whatsoever.

The learned Prescribed Authority has rejected the objection of the petitioners on the ground that the objectors are in unauthorized occupation of the land holding, therefore, they are not entitled to file objection and the objection was dismissed summarily. Having considered the facts and circumstances of the case in the light of the law laid down by the Allahabad High Court in the cases referred to above coupled with the fact that positive stand had been taken by the petitioners that they are in possession of the holding for the last 20 years and the averment that tenure holder Basant Singh has not been residing in the village since 20 years, therefore, the choice given on behalf of Sri Ghamand Singh, who is not admittedly a tenure holder, is without any basis and is not tenable, therefore, I am of the considered view that the Prescribed Authority ought to have decided the objection after hearing the petitioners and after affording them opportunity to adduce evidence to substantiate their stand whether or not they have preferred their rights as alleged by them. Accordingly, the orders under challenge passed by the Prescribed Authority as well as Additional District Judge Nainital are liable to be set aside. The writ petition deserves to be allowed.

The writ petition is allowed. The impugned order dated 22-11-1984 passed by the 1st Additional District Judge Nainital and order dated 26-3-1983 passed by the Prescribed authority (Annexure No.11 & 10 respectively) are set aside. The

matter is remanded to the Prescribed Authority to decide the case afresh and the objection filed by the petitioners on merit after affording opportunity of hearing to the petitioners to adduce evidence, as mentioned above.

Interim order dated 25-2-1985 stands vacated.

All application stands disposed of accordingly.

(B.S. Verma, J.)

RCP